

§ 365.4

(b) If a rate or charge for, or in connection with, the construction of a facility described in paragraph (a)(2) of this section, or for electric energy produced by a facility described in paragraph (a)(2) of this section (other than any portion of a rate or charge which represents recovery of the cost of a wholesale rate or charge), was in effect under the laws of any State on October 24, 1992, or if any portion of a facility described in paragraph (a)(2) of this section is owned or operated by an electric utility company that is an affiliate or associate company of the applicant, the applicant must also file a copy of a specific determination from every State commission having jurisdiction over any such rate or charge, or if the rate or charge is a rate or charge of an affiliate of a registered holding company, a specific determination from every State commission having jurisdiction over the retail rates and charges of the affiliates of the registered holding company, that allowing the facility to be an eligible facility:

- (1) Will benefit consumers,
- (2) Is in the public interest, and
- (3) Does not violate State law.

(c) Applications for exempt wholesale generator status must also include a copy of a notice of the application suitable for publication in the FEDERAL REGISTER in accordance with the specifications in §385.203(d) of this chapter. The notice must state the applicant's name, the date of the application, and a brief description of the applicant and the facility or facilities which are or will be eligible facilities owned and/or operated by the applicant. The notice shall be on electronic media as specified by the Secretary.

[Order 550, 58 FR 8906, Feb. 18, 1993, as amended by Order 550-A, 58 FR 21255, Apr. 20, 1993; Order 647, 69 FR 32439, June 10, 2004]

§ 365.4 Effect of filing.

A person applying in good faith for a Commission determination of exempt wholesale generator status will be

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deemed to be an exempt wholesale generator from the date of receipt of the application until the date of Commission action pursuant to §365.5.

§ 365.5 Amendment of applications.

The Commission will allow amendments of applications for good cause shown without payment of additional filing fees. If the amendment is accepted, notice of the amended application will be published in the FEDERAL REGISTER, with further opportunity for comments.

[Order 591, 61 FR 57328, Nov. 6, 1996]

§ 365.6 Commission action.

If the Commission has not issued an order granting or denying an application within 60 days of receipt of the application, the application will be deemed to have been granted.

[Order 550, 58 FR 8906, Feb. 18, 1993. Redesignated by Order 591, 61 FR 57327, Nov. 6, 1996]

§ 365.7 Notification of Commission action to the Securities and Exchange Commission.

The Secretary of the Commission will notify the Securities and Exchange Commission whenever a person is determined to be an exempt wholesale generator.

[Order 550, 58 FR 8906, Feb. 18, 1993. Redesignated by Order 591, 61 FR 57327, Nov. 6, 1996]

§ 365.8 Procedure for notifying Commission of material change in facts.

If there is any material change in facts that may effect an EWG's eligibility for EWG status under section 32 of the Public Utility Holding Company Act of 1935, the EWG must within 60 days: apply for a new determination of EWG status; file a written explanation of why the material change in facts does not affect the EWG's status; or notify the Commission that it no longer seeks to maintain EWG status.

[Order 550, 58 FR 8906, Feb. 18, 1993. Redesignated by Order 591, 61 FR 57327, Nov. 6, 1996]